

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.B., *et al.*, by Bruce A. Wolf, their
guardian ad litem,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*

Defendants.

CASE NO. 2:19-cv-00069-RSL

UNITED STATES' ANSWER
TO AMENDED COMPLAINT

COMES NOW the United States, by and through undersigned counsel, Brian T. Moran, United States Attorney for the Western District of Washington, and Tricia Boerger, Assistant United States Attorney for said District, and hereby files the following Answer to Plaintiffs' Amended Complaint.

I. INTRODUCTION

1.1 Paragraph 1.1 is an introductory statement to which no response is required. To the extent a response is required, the United States admits only that Plaintiffs were removed from the care of their biological mother, and for Plaintiffs J.M. Jr., and G.M., their biological father. To the extent Plaintiffs attempt to summarize the contents of

1 DSHS or Tribal records, the United States admits only that the records speak for
 2 themselves as to their content, and the United States specifically denies any allegations in
 3 the Amended Complaint inconsistent with the content of the authenticated records.
 4

5 Except as expressly admitted, the United States denies the allegations in Paragraph 1.1.

6 1.2 Paragraph 1.2 is an introductory statement to which no response is
 7 required. To the extent a response is required, the United States denies the allegations in
 8 Paragraph 1.2 and puts Plaintiffs to their proof.
 9

10 II. PARTIES

11 2.1 Admitted.

12 2.2 Admitted

13 2.3 Admitted.

14 2.4 Admitted.

15 2.5 The United States admits that Bruce A. Wolf was appointed by the King
 16 County Superior Court as a “Limited Guardian Ad Litem” for Plaintiffs “for the purpose
 17 of investigating, making a claim, and possibly bringing about a civil lawsuit against
 18 various parties and/or entities including the State of Washington, the Muckleshoot tribe,
 19 and/or other entities, agencies, or persons.” Except as expressly admitted, the United
 20 States denies the allegations of Paragraph 2.5.
 21

22 2.6 The United States admits that the Bureau of Indian Affairs (“BIA”) has
 23 provided funding to the Muckleshoot Tribe under a Compact of Self-Governance,
 24 pursuant to Title II of Public Law 103-413. The terms of the Self-Governance Compact
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1 speak for themselves and the United States specifically denies any terms or
2 interpretations of terms inconsistent with the authenticated document(s). Except as
3 expressly admitted, the United State denies the allegations of Paragraph 2.6.
4

5 2.7 Paragraph 2.7 is not directed at the United States and therefore no response
6 is required.

7 **III. JURISDICTION AND VENUE**

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9 3.1 Paragraph 3.1 is a statement of jurisdiction to which no response is
10 required. To the extent a response is required, the United States admits only that the
11 Plaintiffs have filed suit against the United States pursuant to the Federal Tort Claims Act
12 (“FTCA”) and that the alleged acts or omissions are claimed to have occurred in the
13 Western District of Washington. Except as expressly admitted, the United States denies
14 the allegations of Paragraph 3.1.
15

16
17 3.2 The United States admits that Plaintiffs’ filed individual claims for
18 damages with the BIA on February 21, 2018 and those claims were initially denied on
19 August 16, 2018, and finally denied by the BIA after reconsideration, on October 11,
20 2018. Except as expressly admitted, the United States denies the allegations of Paragraph
21 3.2.
22

23 3.3 The United States admits that Plaintiffs’ filed individual claims for
24 damages with the U.S. Department of Health and Human Services on February 21, 2018,
25 which claims were deemed denied by BIA’s denial of the same claims on August 16,
26
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28

1 2018. Except as expressly admitted, the United States denies the allegations of Paragraph
2 3.3.

3 3.4 Paragraph 3.4 is not directed at the United States and therefore no response
4 is required.
5

6 **IV. FACTS**

7 4.1 The United States admits, based upon information and belief, that S.B. and
8 M.B. are the biological children of Jana Bellack and Nickolas Bakke. The United States
9 lacks knowledge or information sufficient to admit or deny the remaining allegations in
10 Paragraph 4.1 and therefore denies the same.
11

12 4.2 The United States admits, based upon information and belief, that J.M. Jr.
13 and G.M. are the biological children of Jana Bellack and Jonathan S. Moses Sr.
14

15 4.3 The United States admits that Plaintiffs were removed from the care of
16 Bellack in 2013. Except as expressly admitted, the United States denies the allegations in
17 Paragraph 4.3.
18

19 4.4 To the extent Plaintiffs attempt to summarize the contents of DSHS or
20 Tribal records, the United States admits only that the records speak for themselves as to
21 their content, and the United States specifically denies any allegations in the Amended
22 Complaint inconsistent with the content of the authenticated records. Except as expressly
23 admitted, the United States denies the allegations in Paragraph 4.4.
24

25 4.5 The United States admits that DSHS removed M.B. and S.B. from
26 Bellack's home and placed them with relatives in 2005 and 2007. The United States lacks
27
28

1 sufficient knowledge or information to admit or deny the allegations as to Plaintiff, J.M.,
2 Jr. The United States avers that Plaintiff, G.M. was not yet born at the time of the
3 allegations in Paragraph 4.5. Except as expressly admitted, the United States denies the
4 allegations in Paragraph 4.5.
5

6 4.6 The allegations in Paragraph 4.6 are too vague as to the identity of the
7 referenced sex offender, or the specific Plaintiffs, for the United States to admit or deny
8 the allegations and therefore, the United States denies the same. The United States avers
9 that two of the Plaintiffs, J.M., Jr. and G.M., are alleged to be the biological children of
10 Jonathan S. Moses, Sr.
11

12 4.7 The allegations in Paragraph 4.7 are too vague as to the timeframe or
13 identity of specific reports received by DSHS or the Tribe to admit or deny the
14 allegations and therefore, the United States denies the same.
15

16 4.8 To the extent Plaintiffs attempt to summarize the contents of DSHS
17 records, the United States admits only that the records speak for themselves as to their
18 content, and the United States specifically denies any allegations in the Amended
19 Complaint inconsistent with the content of the authenticated records. Except as expressly
20 admitted, the United States denies the allegations in Paragraph 4.8.
21

22 4.9 Based upon information and belief, the United States denies that Francis
23 Cacalda was an employee of the Tribe on or about May 31, 2005. To the extent Plaintiffs
24 attempt to summarize the contents of DSHS records, the United States admits only that
25 the records speak for themselves as to their content, and the United States specifically
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1 denies any allegations in the Amended Complaint inconsistent with the content of the
2 authenticated records. The United States further avers that the allegations in the last
3 sentence of Paragraph 4.9 are too vague as to the identity of the convicted felon or
4 registered sex offender to admit or deny the allegations and therefore, the United States
5 denies the same. Except as expressly admitted, the United States denies the allegations in
6 Paragraph 4.9.
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9 4.10 The United States admits the allegations in the first sentence of Paragraph
10 4.10. The United States admits that, upon information and belief, Plaintiffs S.B. and M.B.
11 were passengers in the car, and that M.B. suffered a broken arm. As to the remaining
12 allegations in Paragraph 4.10, to the extent Plaintiffs attempt to summarize the contents
13 of DSHS records, the United States admits only that the records speak for themselves as
14 to their content, and the United States specifically denies any allegations in the Amended
15 Complaint inconsistent with the content of the authenticated records. The United States
16 avers that two Plaintiffs are alleged to be the biological children of Jonathan Moses Sr.
17 and that Plaintiff, G.M., was not yet born at the time of the incident alleged in Paragraph
18 4.10. Except as expressly admitted, the United States denies the allegations in Paragraph
19 4.10.
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23 4.11 As to the allegations in the first four sentences of Paragraph 4.11, to the
24 extent Plaintiffs attempt to summarize the contents of DSHS records, the United States
25 admits only that the records speak for themselves as to their content, and the United
26 States specifically denies any allegations in the Amended Complaint inconsistent with the
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1 content of the authenticated records. As to the remaining allegations in Paragraph 4.11,
2 the allegations are too vague in time and scope for the United States to admit or deny the
3 allegations and therefore, the United States denies the same. Except as expressly
4 admitted, the United States denies the allegations in Paragraph 4.11.
5

6 4.12 To the extent Plaintiffs attempt to summarize the contents of DSHS
7 records, the United States admits only that the records speak for themselves as to their
8 content, and the United States specifically denies any allegations in the Amended
9 Complaint inconsistent with the content of the authenticated records. Except as expressly
10 admitted, the United States denies the allegations in Paragraph 4.12.
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12

13 4.13 To the extent Plaintiffs attempt to summarize the contents of DSHS
14 records, the United States admits only that the records speak for themselves as to their
15 content, and the United States specifically denies any allegations in the Amended
16 Complaint inconsistent with the content of the authenticated records. Except as expressly
17 admitted, the United States denies the allegations in Paragraph 4.13.
18
19

20 4.14 To the extent Plaintiffs attempt to summarize the contents of DSHS
21 records, the United States admits only that the records speak for themselves as to their
22 content, and the United States specifically denies any allegations in the Amended
23 Complaint inconsistent with the content of the authenticated records. Except as expressly
24 admitted, the United States denies the allegations in Paragraph 4.14.
25
26

27 4.15 To the extent Plaintiffs attempt to summarize the contents of DSHS
28 records, the United States admits only that the records speak for themselves as to their

1 content, and the United States specifically denies any allegations in the Amended
2 Complaint inconsistent with the content of the authenticated records. Except as expressly
3 admitted, the United States denies the allegations in Paragraph 4.15.
4

5 4.16 To the extent Plaintiffs attempt to summarize the contents of DSHS
6 records, the United States admits only that the records speak for themselves as to their
7 content, and the United States specifically denies any allegations in the Amended
8 Complaint inconsistent with the content of the authenticated records. Except as expressly
9 admitted, the United States denies the allegations in Paragraph 4.16.
10

11 4.17 To the extent Plaintiffs attempt to summarize the contents of DSHS
12 records, the United States admits only that the records speak for themselves as to their
13 content, and the United States specifically denies any allegations in the Amended
14 Complaint inconsistent with the content of the authenticated records. Except as expressly
15 admitted, the United States denies the allegations in Paragraph 4.17.
16

17 4.18 To the extent Plaintiffs attempt to summarize the contents of DSHS
18 records, the United States admits only that the records speak for themselves as to their
19 content, and the United States specifically denies any allegations in the Amended
20 Complaint inconsistent with the content of the authenticated records. The allegations in
21 the last sentence of Paragraph 4.18 regarding “States, Federal, and Tribal rules and
22 policies,” are too vague for the United States to admit or deny the allegations and
23 therefore, the United States denies the same. Except as expressly admitted, the United
24 States denies the allegations in Paragraph 4.18.
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1 4.19 The allegations in the first sentence of Paragraph 4.19 are too vague in time
2 or scope for the United States to admit or deny the allegations and therefore, the United
3 States denies the allegations in the first sentence of Paragraph 4.19. As to the remaining
4 allegations in Paragraph 4.19, to the extent Plaintiffs attempt to summarize the contents
5 of criminal records, the United States admits only that the records speak for themselves
6 as to their content, and the United States specifically denies any allegations in the
7 Amended Complaint inconsistent with the content of the authenticated records. Except as
8 expressly admitted, the United States denies the allegations in Paragraph 4.19.
9

10 4.20 The allegations in Paragraph 4.20 are too vague in time or scope for the
11 United States to admit or deny the allegations and therefore, the United States denies the
12 allegations in Paragraph 4.20.
13

14 4.21 To the extent Plaintiffs attempt to summarize the contents of DSHS
15 records, the United States admits only that the records speak for themselves as to their
16 content, and the United States specifically denies any allegations in the Amended
17 Complaint inconsistent with the content of the authenticated records. Except as expressly
18 admitted, the United States denies the allegations in Paragraph 4.21.
19

20 4.22 The United States admits that Plaintiffs were removed from Bellack's home
21 on May 2, 2013. As to the remaining allegations in Paragraph 4.22, to the extent
22 Plaintiffs attempt to summarize the contents of DSHS or police records, the United States
23 admits only that the records speak for themselves as to their content, and the United
24 States specifically denies any allegations in the Amended Complaint inconsistent with the
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1 content of the authenticated records. Except as expressly admitted, the United States
2 denies the allegations in Paragraph 4.22.

3 4.23 Denied.

4
5 4.24 The United States admits the allegations in the first sentence of Paragraph
6 4.24. The United States lacks sufficient knowledge or information to admit or deny the
7 remaining allegations in Paragraph 4.24 and therefore, the United States denies the same.
8

9 4.25 The United States admits the allegations in the first sentence of Paragraph
10 4.25. The United States admits the allegations in the last sentence of Paragraph 4.25. The
11 United States lacks sufficient knowledge or information to admit or deny the remaining
12 allegations in Paragraph 4.25 and therefore, the United States denies the same.
13

14 4.26 The United States lacks knowledge or information sufficient to admit or
15 deny the allegations in Paragraph 4.26 and therefore denies the same.
16

17 4.27 The United States admits the allegations in the first and second sentences of
18 Paragraph 4.27. To the extent Plaintiffs attempt to summarize the contents of Dr.
19 Coffey's records, the United States admits only that the records speak for themselves as
20 to their content, and the United States specifically denies any allegations in the Amended
21 Complaint inconsistent with the content of the authenticated records. Except as expressly
22 admitted, the United States denies the allegations in Paragraph 4.27.
23
24

25 4.28 The United States lacks knowledge or information sufficient to admit or
26 deny the remaining allegations in Paragraph 4.28 and therefore denies the same.
27
28

V. CAUSES OF ACTION

1 5.1 Denied.

2 5.2 Denied.

3 5.3 Denied.

4 5.4 Denied.

5 5.5 Denied.

6 5.6 Denied.

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9
10 **VI. INJURIES AND DAMAGES**

11 6.1 Denied.

12 6.2 There are no substantive allegations in Paragraph 6.2 and therefore no
13 response is required. To the extent a response is required, the United States denies that
14 any act or omission of a government employee caused Plaintiffs' claimed injuries or
15 damages.
16
17

18 **VII. RELIEF REQUESTED**

19 7.1 – 7.4 The United States makes no response to Plaintiffs' prayer for relief
20 as none is required. To the extent a response is required, the United States denies that
21 Plaintiffs are entitled to the relief sought from the United States.
22

23 All allegations in Plaintiffs' Amended Complaint not specifically admitted are
24 denied.
25

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AFFIRMATIVE AND OTHER DEFENSES

1
2 1. Plaintiffs' claims against the United States fail to state a claim upon which
3 relief can be granted.
4

5 2. Plaintiffs' claims against the United States are barred by the statute of
6 limitations for failure to timely submit their claims in writing to the appropriate federal
7 agency within two years after the claim(s) accrued pursuant to 28 U.S.C. § 2401(b).
8

9 3. The Court lacks subject matter jurisdiction over Plaintiffs' claims against
10 the United States.

11 4. Plaintiffs' Amended Complaint fails to provide the United States with fair
12 notice of all claims in accordance with Fed. R. Civ. P. 8.
13

14 5. The injuries and damages alleged in Plaintiffs' Amended Complaint were
15 not actually or proximately caused by or contributed to by any negligent or wrongful act
16 or omission of any agent, employee, or representative of the United States.
17

18 6. Plaintiffs' damages, if any, must be reduced by the percentage of fault
19 attributable to persons or entities other than the United States, including but not limited to
20 the State of Washington.
21

22 7. Plaintiffs' claims against the United States are barred to the extent that they
23 are based on the execution of a statute or regulation pursuant to 28 U.S.C. § 2680(a).
24

25 8. Plaintiffs' claims against the United States are barred to the extent that they
26 are based on the exercise or performance or the failure to exercise or perform a
27 discretionary function or duty pursuant to 28 U.S.C. § 2680(a).
28

1 9. Plaintiffs' injuries and damages, if any, were caused by the acts or
2 omissions of others over whom the United States had no control.

3 10. Plaintiffs' injuries and damages, if any, were caused by other preexisting or
4 unrelated sicknesses, injuries, or other medical or mental health conditions.
5

6 11. The United States complied with any duties of care it may have owed
7 Plaintiffs under Washington State law.
8

9 12. To the extent Plaintiffs' Amended Complaint asserts claims of negligence
10 or relief not raised in their administrative claims, the claims are barred by
11 28 U.S.C. § 2675(a).
12

13 13. To the extent Plaintiffs are entitled to recover damages from the United
14 States in this action, which the United States denies, the United States is entitled to a
15 credit or set-off for any past or future non-collateral source benefits paid to or on behalf
16 of or received by any Plaintiff, to the extent allowed under federal and state common law
17 and statutory law.
18

19 14. To the extent Plaintiffs are entitled to recover any damages from the United
20 States in this action, which the United States denies, Plaintiffs' recovery is limited to the
21 damages recoverable under the Federal Tort Claims Act.
22

23 15. Pursuant to 28 U.S.C. § 2674, Plaintiffs are not entitled to recover pre-
24 judgment interest against the United States.
25

26 16. The United States hereby specifically preserves any and all other defenses,
27 not currently known, which it has or through discovery it learns may be applicable.
28

1 WHEREFORE, having fully answered all counts of the Amended Complaint, the
2 United States prays that Plaintiffs take nothing by way of their Amended Complaint, that
3 it be dismissed, and that judgment be awarded in favor of the United States, together with
4 costs and such other and further relief, as the Court deems appropriate in this case.
5

6 DATED this 23rd day of April, 2019.

7 Respectfully submitted,

8 BRIAN T. MORAN
9 United States Attorney
10

11 s/ Tricia Boerger
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

It is further certified that on April 23, 2019, I electronically filed said pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Allen M. Ressler allen@resslertesh.com

I further certify that on April 23, 2019, I mailed by United States Postal Service said pleading to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

-0-

Dated this 23rd day of April, 2019.

s/ Julene Delo
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